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In the Matter of

Implementation of the Pay Telephone Re-classification and Compensation Provisions of the Telecommunications Act of 1986

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
CC Docket No. 96-128

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**REPLY COMMENTS OF
MOBILEMEDIA COMMUNICATIONS, INC.**

Pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("Commission"), 47 C.F.R. § 1.415, MobileMedia Communications, Inc., the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America (collectively "MobileMedia"),¹ by its attorneys, hereby submits these Reply Comments in response to comments filed in the above-captioned proceeding. In support thereof, MobileMedia states the following:

I. SUMMARY

MobileMedia urges the Commission to adopt a coin deposit compensation plan, should the Commission determine that payphone service providers ("PSP") are entitled to compensation for subscriber 800 calls.² A coin deposit compensation method

¹ MobileMedia provides paging services throughout the United States. MobileMedia's operations include local, regional, and nationwide common carrier paging systems. Among the services MobileMedia offers to its subscribers is the ability to initiate messages on its regional and nationwide paging system toll-free. To provide this service, MobileMedia subscribes to 800 toll-free numbers. Consequently, MobileMedia has a substantial interest in, and will be affected by, the instant *Notice of Proposed Rule Making. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-254 (rel. June 6, 1996) ("*Payphone NPRM*").

² For purposes of these Reply Comments, the term "subscriber 800 calls" includes (continued...)

is the only method which fairly allocates the costs of compensating PSPs for using pay-phones for subscriber 800 calls. Paging carriers, which provide services at flat rates with low margins, will not be in a position to absorb the costs of the compensation schemes favored by the Commission. As a result, imposing the costs of PSP compensation on paging carriers that make 800 number access available to their subscribers will inevitably force these carriers to eliminate this attractive service option, a result which is clearly contrary to the public interest. In addition, imposing the PSP compensation obligation upon the 800 subscriber will facilitate the fraudulent use of payphones, at the expense of the subscribers.

The Commission possesses the necessary authority under the Communications Act and should exercise such authority to adopt a coin deposit PSP compensation method. Nevertheless, should the Commission reject such a PSP compensation methodology, the costs of PSP compensation should be spread equitably among all businesses that benefit from 800 service.

The potential elimination of 800 toll-free services and the impact of payphone fraud will affect the entire universe of 800 subscribers, not just paging carriers. Consequently, the Commission must carefully consider the impacts of any PSP compensation method upon 800 subscribers before taking final action regarding the *Payphone NPRM*. MobileMedia does not believe that proper consideration of the subscriber 800 issues can be undertaken based upon the current record in this proceeding and

²(...continued)

numbers with an "888" code which are the functional equivalent of subscriber 800 numbers. See *Payphone NMPR* at ¶ 15, n.49.

therefore urges the Commission to institute additional comment procedures to address these issues.

II. MOBILEMEDIA SUPPORTS THE USE OF A COIN DEPOSIT PSP COMPENSATION METHOD.

A. The Commission's Preferred PSP Compensation Methods are Unreasonable and Inequitable.

MobileMedia's reply comments will focus on the issue of the appropriate method for compensating PSPs for subscriber 800 calls from payphones. *See Payphone NPRM* at ¶¶ 24-28. In the *Payphone NPRM*, the Commission considered three categories of entities that might be required to pay such compensation: (1) the caller using the payphone; (2) the carrier over whose network the call is placed; or, (3) in the case of subscriber 800 calls, the 800 subscriber. *Id.* at ¶ 24. Further, the Commission considered two methods for compensating PSPs. The first method is a "carrier pays" plan whereby the interexchange carrier ("IXC") that carries the subscriber 800 call pays a per-call charge to the PSP. *Id.* at ¶ 25. IXCs would have the discretion to decide how to recover such costs. *Id.* The second method is a set-use fee under which the IXC would bill and collect a per-call charge from the end users, or in the case of subscriber 800 calls, from the 800 subscriber, and remit that charge (less a collection fee) to the PSP.³ *Id.* at ¶ 26. The Commission tentatively favors the carrier-pays mechanism. *Id.* at ¶ 28.

³ Either mechanism presupposes that IXCs can track 800 calls from payphones. It is unclear at this time whether all IXCs will be immediately able to track 800 calls from payphones in order to support a per call compensation method. *See, e.g., Payphone NPRM* at ¶¶ 29-20; "Comments of Sprint Corporation" 13, n.7 (filed July 1, 1996); "Comments of MCI Telecommunications Corporation" 7 (filed July 1, 1996).

Significantly, the *Payphone NPRM* appears to contemplate applying either compensation method uniformly to access code calls, subscriber 800 and other toll-free number calls, and debit card calls. *Id.* at ¶¶ 24-28. In the context of subscriber 800 calls, however, both compensation methods would place the PSP compensation burden upon the wrong payor. Under the proposed set-use fee, the Commission specifically states that the 800 subscriber would be billed for all payphone-originated calls. *Id.* at ¶ 26. Under the proposed carrier pays method, the Commission would simply allow the IXC to determine how to recover the costs associated with PSP compensation. *Id.* at ¶ 25. The IXC would of course be expected to seek recovery of these costs from the 800 subscriber since the IXC would have no way of billing or collecting the costs from transient payphone users.

In short, in the context of subscriber 800 calls, both compensation methods considered in the *Payphone NPRM* impose the PSP compensation upon the 800 subscriber, the receiver of the calls, rather than upon the caller using a payphone. As a result, in the context of an 800 call from a payphone to a paging subscriber, every relevant entity would pay for providing such service, except the caller, the entity that caused the cost in the first place. The paging subscriber pays the paging service provider for paging services. The paging service provider pays the IXC for 800 service. The IXC pays the local exchange carrier for interconnection, and the PSP pays for access to the network. Now the Commission is proposing that the paging service provider also pay the PSP for 800 calls, leaving the caller free to pay nothing. MobileMedia believes this result is inequitable and fundamentally inconsistent with the Commission's obligation

under Section 276 of the Telecommunications Act of 1996 to ensure *fair* compensation for PSPs. 47 U.S.C. § 276(b)(1)(A); *Payphone NPRM* at ¶ 1.

MobileMedia believes that, at least in the case of paging, a coin deposit compensation plan, unlike the plans favored by the Commission, places the PSP compensation burden upon the proper payor, the caller, and is more simple and efficient to administer. The comments of Arch Communications Group, Inc., the Intellicall Companies, Paging Network, Inc. and the Personal Communications Industry Association, also support a coin deposit PSP compensation method.⁴ Consequently, and for the reasons set forth below, MobileMedia supports these parties' comments and submits that a coin deposit PSP compensation plan would best serve the public interest.

As recognized by Paging Network and the Intellicall Companies, the coin deposit method imposes the payment obligation upon the appropriate payor, the caller using the payphone.⁵ Neither the paging service provider nor the paging service customer can control the location from which a call to a paging system is placed. It is the end user that decides whether to use a payphone to make such calls. Consequently, it is impossible for the paging service customer or the paging service provider to predict or control the costs associated with calls from a payphone. Further, it is the caller that is the direct and immediate beneficiary of the convenience of using payphones. However,

⁴ See "Comments of Arch Communications Group, Inc." 2-6 (filed July 1, 1996) ("Arch Comments"); "Comments of the Intellicall Companies" 24-33 (filed July 1, 1996) ("Intellicall Comments"); "Comments of Paging Network, Inc." 11-22 (filed July 1, 1996) ("PageNet Comments"); "Comments of the Personal Communications Industry Association" 3-5 (filed July 1, 1996) ("PCIA Comments").

⁵ See PageNet Comments at 13-14; Intellicall Comments at 23-24

under both the carrier pays and the set-use fee method, it would be the 800 subscriber, not the caller, that would ultimately bear the cost of the caller's choice to use a payphone.⁶ Such a result is irrational.

It would be unreasonable to impose the surcharge upon a party who is unaware of and cannot control whether any given call originates from a payphone and does not benefit from the convenience of making such a call.⁷ That party would have no means of rationally allocating the costs of payphone usage. The coin deposit plan, by contrast, allows for a rational allocation of costs. The calling party will know that he/she will be assessed a charge for using a payphone and thus can decide whether the convenience of placing a message call from a payphone justifies the cost.

Perhaps most important, an increase in operating costs related to PSP compensation will likely require paging carriers to abandon providing 800 service to their subscribers. MobileMedia and other paging carriers operate in an extraordinarily competitive market. Paging subscribers typically pay a flat monthly rate averaging between \$9 and \$17 with no separate usage or toll charges.⁸ Given that parties have proposed PSP compensation rates ranging as high as \$.95 per call,⁹ it would not take many calls (even if only \$.25 per call is assessed) before the 800 service option becomes

⁶ This result is directly contrary to the Commission's conclusion that a compensation system "where the end user pays would satisfy the requirements of the 1996 Act." *Payphone NPRM* at ¶ 28.

⁷ See PCIA Comments at 4.

⁸ *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 95-317, 10 F.C.C.R. 8844, 8855 (1995).

⁹ *Payphone NPRM* at ¶ 37.

a money loser to paging providers that already operate at low margins. The public interest would not be served if a PSP compensation mechanism is adopted which results in the elimination of 800 number access for paging subscribers.

Consistent with Arch Communications Group's comments, MobileMedia believes that the coin deposit method is by far the simplest and the least expensive to administer.¹⁰ Under the coin deposit method, the PSP deals directly with the callers and is guaranteed to receive any compensation to which it may be entitled. By contrast, the carrier pays or set-use fee methods require significantly more complex billing and collection arrangements and, by extension, generate greater transaction costs. Under the carrier pays method, an IXC would pay the PSP on a per-call basis for each call received from a payphone and endeavor to recover its costs in some manner. Similarly, under the set use fee proposal, the IXC would be responsible for billing the 800 subscriber for each call received from a payphone and then remitting that fee (less a collection charge) to the PSP. Such cumbersome billing and collection arrangements would doubtless be more expensive than a simple coin deposit mechanism.

B. The Proposed PSP Compensation Methods Would Encourage Fraud.

The *Payphone NPRM* acknowledges the potential for fraud should the PSPs be granted compensation for subscriber 800 and other toll free calls. *Payphone NPRM* at ¶ 23. PSPs are able to attach auto-dialers to their equipment, allowing them to place multiple 800 calls thereby increasing their revenues from such calls. *Id.* Nevertheless, the Commission proposes to require 800 subscribers to compensate PSPs on a per-

¹⁰ Arch Comments at 4-5.

call basis, a methodology which gives PSPs every incentive to engage in such auto-dial fraud. This is a cause of great concern to 800 subscribers because none of the commenters in this proceeding has proposed a workable solution to this significant problem — at least within the context of either the carrier pays or set-use fee proposals. Consequently, a solution to such fraud must be incorporated into the Commission's final action on the *Payphone NPRM*. The remedy, of course, lies in adoption of the coin deposit PSP compensation method. Forcing the caller to pay for payphone calls before calls are placed would eliminate the financial incentive for PSPs to use an auto-dialer, thereby eliminating the fraud.

C. A Coin Deposit Method is not Unduly Burdensome and is Consistent with the Communications Act.

The Commission tentatively decided against requiring the calling party to deposit coins into the payphone before placing a subscriber 800 call, asserting that such a plan is prohibited by Section 226(e)(2) of the Communications Act, as amended, and is unduly burdensome for many transient payphone users. *Payphone NPRM* at ¶ 27.

Several parties supported this tentative conclusion because they believe such a plan is unduly burdensome and violates the caller's expectation that 800 calls are free.¹¹ Mobile-Media submits that these arguments are without merit.

Requiring callers to deposit coins to place a subscriber 800 call is no more burdensome than requiring callers to deposit coins for local calls. Moreover, it can not

¹¹ See "AT&T Comments" 12 (filed July 1, 1996); "Comments of the American Public Communications Council" 23 (filed July 1, 1996); "Comments of Acted, Inc." 6-7 (filed July 1, 1996); "Comments of New Jersey Payphone Association" 7 (filed July 1, 1996); "Comments of the Virginia State Corporation Commission" 3 (filed July 1, 1996).

be argued that callers have a reasonable expectation that 800 calls from payphones will be free. Indeed, the very term “payphone” implies that a caller should expect to pay to place a call. Further, there are already instances in which a caller is assessed a surcharge for subscriber 800 calls. Certain hotels, for example, charge guests for 800 calls made from their rooms.

Similarly, a coin deposit approach is not contrary to Section 226(e)(2) of the Communications Act. Section 226(e)(2) provides in pertinent part:

The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones.¹²

Thus, the language of Section 226(e)(2) suggests that the Commission is prohibited from adopting coin deposit compensation for PSPs.

As argued by Paging Network, Inc. and the Intellicall Companies, however, this provision cannot be read as a blanket prohibition against the assessment and collection of an advance payment by a PSP for subscriber 800 calls.¹³ Indeed, the Commission has previously held that PSPs are free to assess charges for access code calls in a manner similar to the charge for local calls.¹⁴ Moreover, in the context of access code calls, the Commission stated that Section 226(e)(2) “prohibits the use of advance

¹² 47 U.S.C. § 226(e)(2).

¹³ See Intellicall Comments at 32-34; PageNet Comments at 16-17.

¹⁴ *Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation*, CC Docket No. 91-35, *Notice of Proposed Rule Making*, 6 F.C.C.R. 1448, 1450 (1991).

payments by callers as a means of compensating [PSPs] for originating access code calls, *except where the charge is not greater than the aggregator's fee to reach its own presubscribed* operator service provider.¹⁵ In short, the Commission does not read Section 226(e)(2) as creating an absolute bar to coin deposit compensation for PSPs.

MobileMedia submits therefore that, contrary to the Commission's tentative conclusion in the *Payphone NPRM*, a coin deposit compensation method is not *per se* unlawful. For example, the Commission could permit, without requiring, PSPs to assess callers a charge prior to making a subscriber 800 call. By leaving the PSPs the discretion to assess such a charge or not, the Commission would not be prescribing an advance payment compensation methodology. Similarly, the Commission need not fix a specific charge for subscriber 800 calls from payphones but could establish guidelines or a range of rates for such charges instead. Insofar as the PSP would retain the discretion to determine their fee for use of a payphone, within the predetermined range of reasonableness, the charge would not be prescribed by the Commission.

D. Alternatively, MobileMedia Supports Spreading the PSP Compensation Charges for Subscriber 800 Calls to All Business Users.

For the reasons outlined above, MobileMedia believes that a coin deposit methodology is the most rational, equitable and least expensive method for compensating PSPs for subscriber 800 calls. Nevertheless, should the Commission reject coin deposit compensation, MobileMedia supports the proposal of Paging Network and the Intellicall

¹⁵ *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket No. 91-35, *Memorandum Opinion and Order on Further Reconsideration and Second Further Notice of Proposed Rulemaking*, 10 F.C.C.R. 11457, 11459 (1995) (emphasis supplied).

Companies to spread PSP compensation costs for subscriber 800 calls to all businesses who benefit from 800 services.¹⁶ Specifically, the Commission could require that PSP compensation be added directly to the subscriber line charge assessed to all business users.¹⁷ While this method is less efficient than coin deposit compensation, it would ameliorate some of the adverse impacts to 800 subscribers of the carrier pays and set-use fee methods proposed by the Commission.

III. THE COMMISSION SHOULD INSTITUTE NEW PROCEEDINGS TO ADDRESS PSP COMPENSATION FOR SUBSCRIBER 800 CALLS.

Paging carriers such as MobileMedia represent only a small portion of the total of all 800 subscribers. Federal, state and local governments all use 800 numbers to disseminate information and provide assistance to the public.¹⁸ There are also numerous private hot line services and other charitable organizations that rely on 800 service to make information and assistance available to the public.¹⁹ In addition to these charitable and governmental entities, there are many thousands of small businesses for whom 800 service is the life blood of their business. All of these entities serve important functions benefitting both individual citizens and our Nation as a whole.²⁰

¹⁶ See PageNet Comments at 6-9; Intellicall Comments at 20-21.

¹⁷ PageNet Comments at 7; Intellicall Comments at 21.

¹⁸ See PageNet Comments at 4-6.

¹⁹ *Id.*

²⁰ *Id.*

Consistent with the above discussion, the PSP compensation methods favored by the Commission would force all of these 800 subscribers to bear PSP compensation costs and expose them to substantial losses from auto-dialer fraud. Furthermore, like paging subscribers, these 800 subscribers lack any ability to control or avoid such costs and are not in a strong position to absorb such costs. Consequently, the proposed PSP compensation methods would almost inevitably result in the elimination of important services provided through toll-free 800 calls.

MobileMedia submits, therefore, that the Commission has an obligation to consider carefully the impact of PSP compensation upon 800 subscribers before taking final action in this proceeding. Of course, such consideration necessitates the development of a factual record that is sufficient to support reasoned decision making regarding PSP compensation for subscriber 800 calls. The Commission must assess the economic impact of its proposals on all 800 subscribers, many of whom are not part of the telecommunications industry, but will nonetheless be directly, and perhaps adversely, impacted by the Commission's decision in this proceeding. The record developed to date is simply inadequate to support Commission action on this issue.

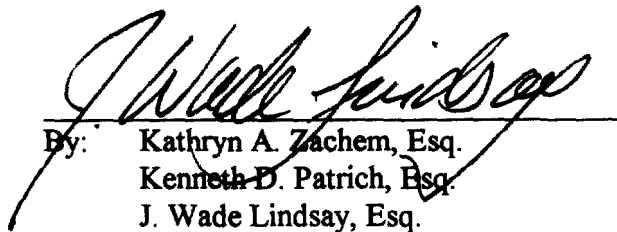
To that end, MobileMedia supports the implementation of an additional notice of proposed rule making specifically designed to address the issues related to PSP compensation for subscriber 800 calls. Such a notice should encourage 800 subscribers to respond and provide information regarding the cost impacts upon their businesses of PSP compensation and auto-dial fraud.

IV. CONCLUSION

For the foregoing reasons, MobileMedia urges the Commission to adopt a coin deposit methodology for compensating PSPs for subscriber 800 calls. A coin deposit compensation mechanism is the most equitable and efficient way to provide PSPs with compensation, and it will help ensure the continued availability of 800 services for paging customers. Moreover, MobileMedia believes that a coin deposit plan can be developed that is consistent with the terms of Section 226(e)(2) of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shelia L. Smith, a secretary at the law firm of Wilkinson, Barker, Knauer & Quinn, hereby certify that on this 15th day of July 1996, copies of the foregoing Reply Comments of MobileMedia Communications, Inc. were served on the following by hand to:

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